IN THE

SUPREME COURT

OF THE

UNITED STATES.

Los Angeles Brush Manufacturing Corporation,

Petitioner,

vs.

William P. James, Judge, District Court of the United States, Southern District of California,

Motion for Leave to File and Petition for Order to Show Cause Why Mandamus Should Not Issue.

FORD W. HARRIS,
Attorney for Petitioner.

Phelps, Stone & Hart Co., Law Printers, Los Angeles.

INDEX.

PAGE

Motion for Leave to File Petition for Rule to Show Cause Why Mandamus Should Not Issue..... 3

Petition for Rule to Show Cause Why Mandamus Should Not Issue..... 3

Points and Authorities..... 7

Proceedings on Motion to Set for Trial..... 9

Order Referring Cause to Master..... 12

Order Referring Cause to Master..... 14

Bill of Complaint..... 16

Answer to Bill of Complaint..... 21

Bill of Complaint..... 30

Answer to Bill of Complaint..... 36

Minute Order 46

Clerk's Certificate 47

TABLE OF CASES AND AUTHORITIES CITED.

PAGE

Barber Asphalt Pav. Co. v. Morris, C. C. A., 67 L. R. A. 761; 132 Fed. 945 8

Betts v. Lewis, 19 Howard 72 7

Equity Rule 46 7

Equity Rule 59 7

Ex parte Crane, 5 Pet. 189; 8 L. Ed. 92 8

Ex parte Hohorst, 150 U. S. 653; 37 L. Ed. 1211 8

Ex parte Morgan, 114 U. S. 174; 29 L. Ed. 135 8

Ex parte Parker, 120 U. S. 737; 30 L. Ed. 818 8

Gaines v. Rugg, 148 U. S. 243; 37 L. Ed. 437 8

In re Winn, 213 U. S. 466; 53 L. Ed. 877 8

Life & Fire Ins. Co. v. Wilson, 8 Pet. 291; 8 L. Ed. 949 8

Life & Fire Ins. Co. v. Adams, 9 Pet. 571; 9 L. Ed. 233 8

Livingston v. Dorgenois, 7 Cranch 577; 3 L. Ed. 444 8

Marbury v. Madison, 1 Cranch 137; 2 L. Ed. 60.... 7

McClellan v. Carland, 217 U. S. 280; 54 L. Ed. 766.. 8

McClellan v. Carland, 217 U. S. 266; 54 L. Ed. 762.. 8

Postal Telegraph Cable Co. v. Call, C. C. A., 255 Fed. 850 8

Re Lasserot, C. C. A., 240 Fed. 325 8

Re Watts, C. C. A., 214 Fed. 80 8

Sec. 234, Judicial Code, 1 Stat. at L. 80 7

Story v. Livingstone, 13 Peters 359 7

Virginia v. Rives, 100 U. S. 313; 25 L. Ed. 667 8

Virginia v. Paul, 148 U. S. 123; 37 L. Ed. 392 8

IN THE

SUPREME COURT

OF THE

UNITED STATES.

Los Angeles Brush Manufacturing Corporation,

Petitioner,

vs.

William P. James, Judge, District Court of the United States, Southern District of California,

Motion for Leave to File Petition for Rule to Show Cause Why Mandamus Should Not Issue.

To the Judges of the Supreme Court of the United States:

Comes now your petitioner, Los Angeles Brush Manufacturing Corporation, and moves that it be permitted to file the annexed petition upon the grounds set forth therein.

LOS ANGELES BRUSH MANUFACTURING CORPORATION,

By FORD W. HARRIS,

Its Attorney.

IN THE

SUPREME COURT

OF THE

UNITED STATES.

Los Angeles Brush Manufacturing Corporation,

Petitioner,

vs.

William P. James, Judge, District Court of the United States, Southern District of California,

Petition for Rule to Show Cause Why Mandamus Should Not Issue.

To the Judges of the Supreme Court of the United States:

Comes now your petitioner, Los Angeles Brush Manufacturing Corporation, a California corporation having its principal place of business in Los Angeles, by its attorney, Ford W. Harris, and alleges:

That your petitioner is informed and believes that some time immediately prior to July 12, 1926, the judges of the United States District Court, Southern District of California, by mutual agreement, appointed Charles C. Montgomery, Esq., as standing Master to try patent causes.

That at the calling of the term calendar on July 12, 1926, and at divers times since each and all of said judges have announced in open court and in chambers that they would not personally try all causes involving patents for invention but would refer substantially all such causes to said standing Master.

That your petitioner is informed and believes that in accordance with such practice, and repeatedly over objections of counsel, said judges have so referred practically all such causes that have come up for setting and the standing Master has set up a court with an extensive docket.

That upon September 13, 1926, His Honor, William P. James, in accordance with such practice referred two causes in which your petitioner is a party to said Master, in accordance with orders, copies of which are attached hereto.

That both of said causes are ordinary and extremely simple patent causes which can be quickly and expeditiously tried, as will appear from the record therein, attached hereto, and no showing of any exceptional condition in either of said causes was made or asked for by His Honor, who referred both of said causes to the Master over the objections of petitioner's counsel, as will appear from the record of proceedings attached hereto.

That the principal reason given for this action is that patent causes sometimes require protracted trials and the court calendar is now and has been for some years rather congested, but it is respectfully suggested that this condition is not exceptional but quite usual in most

of the District Courts and promises to continue indefinitely.

That your petitioner considers that it has an established right under the Equity Rules to a trial in open court under Equity Rule 46, and to have its causes referred to a Master only "upon a showing that some exceptional condition requires it," under Equity Rule 59.

That this established right has been violated by the reference of petitioner's causes to a Master over the specific objection of petitioner's counsel and without any such showing.

That petitioner has no other remedy than to petition Your Honors to act under the supervisory authority established by Sec. 234 of the Judicial Code, 1 Stat. at Large, 80, and in accordance with Virginia v. Rives, 100 U. S. 313, 25 L. Ed. 667.

That unless Your Honors act under Sec. 234, Judicial Code, litigants in patent causes in the Southern District of California will be forced at their own expense to maintain a patent court set up by the judges of the District Court and operating in defiance of the plain intent of the Equity Rules, and particularly rules 46 and 59.

That in so singling out patent causes the judges have unjustly and arbitrarily discriminated against a certain class of litigants, and have subjected these litigants to unnecessary trouble and expense since it is a notorious fact that proceedings before a Master are invariably protracted and expensive and that the costs of such proceedings are borne by the litigants.

Wherefore, your petitioner prays

That Your Honors issue to His Honor, William P. James, a rule to show cause why mandamus should not issue directing him to vacate the order of reference to the Master in the causes above referred to and directing him to place these causes on his calendar for trial.

This petition is based upon the annexed record of said causes and the annexed points and authorities.

LOS ANGELES BRUSH MANUFACTURING CORPORATION,

By FORD W. HARRIS,
Its Attorney.

State of California, County of Los Angeles—ss.

Ford W. Harris, being sworn, deposes and says that he is attorney for Los Angeles Brush Manufacturing Corporation, petitioner above, and that he is familiar with the contents of the above motion, which is true of his own knowledge except as to matters therein stated on information and belief, and as to such matters he believes it to be true.

FORD W. HARRIS.

Subscribed and sworn to before me this 28th day of September, 1926.

(Seal) SALLY P. HARRIS,
Notary Public in and for the County of Los Angeles, State of California.

My commission expires October 16, 1929.

Points and Authorities.

In all trials in equity the testimony of witnesses shall be taken orally in open court except as provided by statute or these rules. The court shall pass upon the admissibility of all evidence offered as in actions at law.

Equity Rule 46.

Save in matters of account, a reference to a Master shall be the exception, not the rule, and shall be made only upon a showing that some exceptional condition requires it.

Equity Rule 59.

The Rules of the Supreme Court of the United States passed to regulate the practice in the courts of equity of the United States are obligatory upon all the courts of the United States and the only modifications or additions which can be made by the Circuit or District Courts are such as shall be consistent with the rules prescribed.

Betts v. Lewis, 19 Howard 72;
Story v. Livingstone, 13 Peters 359.

Mandamus lies to enforce an established right for the invasion of which no other specific legal remedy exists.

Marbury v. Madison, 1 Cranch 137; 2 L. Ed. 60.

The Supreme Court shall have power to issue * * * writs of mandamus in cases warranted by the principles and usages of law, to any courts appointed under authority of the United States.

Sec. 234, Judicial Code, 1 Stat. at L. 80.

It is the peculiar and common use of mandamus to restrain inferior courts and to keep them within their lawful bounds.

Virginia v. Rives, 100 U. S. 313; 25 L. Ed. 667.

Mandamus lies where lower court has acted outside of the exercise of its discretion.

McClellan v. Carland, 217 U. S. 280; 54 L. Ed. 766;
In re Winn, 213 U. S. 466; 53 L. Ed. 877;
Virginia v. Paul, 148 U. S. 123; 37 L. Ed. 392;
Gaines v. Rugg, 148 U. S. 243; 37 L. Ed. 437.

A writ of mandamus will issue to compel a court to exercise its discretion in one way or another.

Ex parte Crane, 5 Pet. 189; 8 L. Ed. 92;
Ex parte Morgan, 114 U. S. 174; 29 L. Ed. 135;
Ex parte Parker, 120 U. S. 737; 30 L. Ed. 818;
Ex parte Hohorst, 150 U. S. 653; 37 L. Ed. 1211.

Writs of mandamus have been repeatedly issued to compel courts to proceed with their business in accordance with the rules and the law applicable thereto.

Livingston v. Dorgenois, 7 Cranch 577; 3 L. Ed. 444;
Barber Asphalt Pav. Co. v. Morris, C. C. A., 67 L. R. A. 761; 132 Fed. 945;
McClellan v. Carland, 217 U. S. 266; 54 L. Ed. 762;
Postal Telegraph Cable Co. v. Call, C. C. A., 255 Fed. 850;
Re Lasserot, C. C. A., 240 Fed. 325;
Life & Fire Ins. Co. v. Wilson, 8 Pet. 291; 8 L. Ed. 949;
Life & Fire Ins. Co. v. Adams, 9 Pet. 571; 9 L. Ed. 233;
Re Watts, C. C. A., 214 Fed. 80.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

HON WILLIAM P. JAMES, JUDGE PRESIDING.

STEBLER PARKER COMPANY, Plaintiff,	)	
-v-	)	No. J-23-H-J in Equity.
L. A. BRUSH MANUFACTURING COMPANY, Defendant.	)	
W. B. CLANCY et al, Plaintiff,	)	
-v-	)	No. J-23-H-J in Equity.
L. A. BRUSH MANUFACTURING COMPANY, Defendant.	)	

APPEARANCES:

For Plaintiffs: Messrs. Lyon & Lyon, by Henry S. Richmond.

For Defendant: Ford W. Harris, Esq.

PROCEEDINGS ON MOTION TO SET FOR TRIAL.

This matter came on for hearing on Monday, September 13, 1926, before Hon. William P. James, District Judge, and the following proceedings were had:

MR. RICHMOND: That is a motion to set for trial, Your Honor. We would like to have these cases set down for trial, but, like most patent cases, they are liable to take some time to be tried. And, if the Court hasn't time to try them, we would ask that they be referred to Special Master C. C. Montgomery.

MR. HARRIS: I call the Court's attention to the fact that there is no motion to refer to the Master, and that there is no showing of any exceptional circumstances in this case which differentiates it from any ordinary patent case. We greatly prefer to have it tried by the Court, and object to having it referred to a Master.

MR. RICHMOND: If the Court please, if the Court will try it we prefer to try all of our cases before the Court, but if we can't we do want a trial. The defendants in this case are infringing on our patent, and we are entitled to an early trial.

THE COURT: Is it a lengthy trial?

MR. HARRIS: I don't think it will be a lengthy trial. Of course I haven't full control of the trial, but as far as I am concerned I haven't any intention to make a long trial of it.

MR. RICHMOND: I haven't any intention to make it any longer than is necessary to bring the facts before the Court, but after having had experience with one three-day case, I don't wish to tell the Court that a case can be tried in three or four days.

THE COURT: I will mark the matter submitted, and after looking over the pleadings, if I determine that it should be referred, I will send you a copy of the order, a copy to each side.

MR. HARRIS: If the copy of the order is made referring it to a Master, I would like to have a notation in the record somewhere that no showing has been made of exceptional circumstances, and that it is referred over counsel's objections.

THE COURT: I will let it clearly appear it is over your objection. Of course I will recite exceptional circumstances concerning our calendar, which will cover that side. As to the exceptional circumstances on the part of the plaintiff, I will have to determine that from the pleadings.

MR. HARRIS: Very well.

THE COURT: But your objection and exception will appear clearly.

MR. HARRIS: Very well; thank you.

[Endorsed]: J 18-J 23 In the District Court of the United States, Southern District of California, Southern Division. Stebler-Parker Company, Plaintiff, -vs- L. A. Brush Manufacturing Co., Defendant. W. B. Clancy et al, Plaintiffs, -v- L. A. Brush Manufacturing Co., Defendant. Proceedings on Motion to Set for Trial. Filed Sep 18 1926 Chas. N. Williams, Clerk By R. S. Zimmerman, Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF CALIFORNIA SOUTHERN DIVISION.

STEBLER PARKER COMPANY, Plaintiff	)	In Equity No. J-18-J.
vs.	)	
	)	ORDER REFERRING
LOS ANGELES BRUSH MANUFACTURING CORPORATION, Defendant	)	CAUSE TO MASTER

This cause now appearing on the call of the Court's calendar to be set for trial, and it being the desire of both counsel for the plaintiff and defendant, as expressed in open Court, that a date be fixed for the trial hereof, and counsel for the plaintiff insists that, because of alleged acts of infringement committed by the defendant, plaintiff will suffer damage by reason of the great delay in the hearing and determination of the issues herein; and it appearing that because of the congestion of the Court's calendar there are many other causes entitled to be first heard, including a large number of criminal causes which are entitled to preference over civil matters as to the trial thereof; and it further appearing that, because of the protracted length of patent trials, the result has been and is that other civil litigants having causes to be tried have not been accorded a fair proportion of the time of the Court; and it appearing that this condition will continue unless many of the patent cases, including this cause, now pending can be disposed of in the manner herein provided; and, hence, that in order to fairly and within a reasonable

time dispose of the business before the Court, it is necessary that this order be made;

IT IS NOW ORDERED, that this cause be referred to Charles C. Montgomery, Esq., Standing Master in Chancery, to take and hear the evidence offered by the respective parties and to make his conclusions as to the facts in issue and recommend the judgment to be entered thereon; the Standing Master in Chancery is authorized and empowered to do all things and to make such orders as may be required to accomplish a full hearing on all matters of fact and law in issue in this cause; the objection of counsel for the defendant to the making of this order referring the cause to the Master is hereby noted and an exception is allowed in favor of the defendant.

Dated this 13th day of September, 1926.

Wm. P. James,

District Judge.

[Endorsed]: In Equity No. J. 18 J. U. S. District Court, Southern District of California, Stebler Parker Company, plaintiff, vs. Los Angeles Brush Manufacturing Corporation, defendant. Order referring cause to Master. Filed Sep. 14, 1926. Chas. N. Williams, Clerk. By Murray E. Wire, Deputy Clerk.

IN THE UNITED STATES DISTRICT COURT, FOR THE SOUTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION.

W. B. CLANCY, W. A. JOHNSON, and GEORGE A. SARAU, as Trustee, GEORGE D. PARKER, FRED STEBLER, and STEBLER PARKER COMPANY, Plaintiffs	In Equity No. J-23-H. ORDER REFERRING CAUSE TO MASTER.
vs.	
LOS ANGELES BRUSH MANUFACTURING CORPORATION, Defendant	

This cause now appearing on the call of the Court's calendar to be set for trial, and it being the desire of both counsel for the plaintiffs and defendant, as expressed in open Court, that a date be fixed for the trial hereof, and counsel for the plaintiffs insists that, because of alleged acts of infringement committed by the defendant, plaintiffs will suffer damage by reason of the great delay in the hearing and determination of the issues herein; and it appearing that because of the congestion of the Court's calendar there are many other causes entitled to be first heard, including a large number of criminal causes which are entitled to preference over civil matters as to the trial thereof; and it further appearing that, because of the protracted length of patent trials, the result has been and is that other civil litigants having causes to be tried have not been accorded a fair proportion of the time of the Court; and it appearing that this condition will continue unless

many of the patent cases, including this cause, now pending can be disposed of in the manner herein provided; and hence, that in order to fairly and within a reasonable time dispose of the business before the Court, it is necessary that this order be made;

IT IS NOW ORDERED, that this cause be referred to Charles C. Montgomery, Esq., Standing Master in Chancery, to take and hear the evidence offered by the respective parties and to make his conclusions as to the facts in issue and recommend the judgment to be entered thereon; the Standing Master in Chancery is authorized and empowered to do all things and to make such orders as may be required to accomplish a full hearing on all matters of fact and law in issue in this cause; the objecton of counsel for the defendant to the making of this order referring the cause to the Master is hereby noted and an exception is allowed in favor of the defendant.

Dated this 13th day of September, 1926.

Wm. P. James, District Judge.

[Endorsed]: In Equity No. J-23-H. U. S. District Court, Southern District of California, W. B. Clancy, et al., Plaintiffs vs. Los Angeles Brush Mfg. Corporation, Defendant. Order referring cause to Master. Filed Sep. 14, 1926. Chas. N. Williams, Clerk. By Murray E. Wire, Deputy Clerk.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION.

STEBLER PARKER COMPANY, Plaintiff, vs. LOS ANGELES BRUSH MANUFACTURING CORPORATION, Defendant.	IN EQUITY NO. J 18 J BILL OF COMPLAINT.

Comes now plaintiff above named, and complaining of the above named defendant alleges:

1. That plaintiff is now and during all the times hereinafter referred to, has been a corporation organized and existing under and by virtue of the laws of the State of California, and has and had its principal place of business in the City of Riverside, State of California.

2. That defendant, Los Angeles Brush Manufacturing Corporation, is now, and during all the times hereinafter referred to with respect to it, has been a corporation duly organized and existing under and by virtue of the laws of the State of California, and has and had its principal place of business in the City of Los Angeles, State of California.

3. That the ground of jurisdiction of the court herein is by reason of the patent laws of the United States, this suit arising out of infringement of Letters Patent granted for invention.

4. That heretofore, to wit, prior to December 19, 1921, Fred Stebler of Riverside, California, was the original, first and sole inventor of a new and improved

Brush; that the same was novel and patentable under the laws and statutes of the United States relating to the grant and issuance of Letters Patent for invention; that heretofore, to wit, on December 19th, 1921, said Fred Stebler filed in the United States Patent Office an application in writing in due form of law for the grant and issuance of Letters Patent of the United States for said invention and complied with all the requirements of said statutes and laws and of the rules of the United States Patent Office; that by an instrument in writing said Fred Stebler did sell, assign, transfer and set over said invention and the exclusive right, title and interest in and to all Letters Patent to be granted and issued therefor to plaintiff, Stebler-Parker Company, its successors and assigns; that prior to May 8th, 1923, said instrument in writing was duly recorded in the United States Patent Office; all as in and by said original instrument in writing, or a duly certified copy thereof ready in court to be produced, as may be required, will more fully and at large appear; that thereafter, to wit, on May 8th, 1923, Letters Patent of the United States No. 1,454,191, were duly and regularly granted by the government of the United States to plaintiff, Stebler-Parker Company, its successors and assigns for said invention, all as in and by said original Letters Patent, or a duly certified copy thereof ready in court to be produced, as may be required, will more fully and at large appear; that prior to the grant, issuance and delivery of said Letters Patent, all proceedings were had and taken in the matter of said application for patent required by the patent laws and statutes of the United States or the rules of

the United States Patent Office; that plaintiff Stebler-Parker Company is now, and during all the times since May 8th, 1923, has been the sole and exclusive owner of said Letters Patent and of all rights and privileges thereby granted and secured.

5. That immediately upon the invention and production of said brush by said Stebler, the same went into great, general and extended use, and superseded all prior brush constructions, and the trade, public and users generally have recognized the novelty and utility thereof, and the validity of said Letters Patent, and plaintiff has manufactured and sold large numbers of Brushes embodying and containing the said invention, and realized large gains, profits and advantages therefrom, and built up and acquired by reason of the novelty and utility of said invention a large and profitable trade and demand therefor; that defendant, in order to appropriate to itself the trade and demand therefor and divert the same to itself, has infringed upon said Letters Patent by manufacturing brushes infringing said patent, as hereinafter set forth; that each and every device and brush, embodying or containing the invention patented in or by said Letters Patent, manufactured, used or sold by plaintiff, has been conspicuously marked with the word "Patented", together with the day and date of the grant and issuance of said Letters Patent, to wit, May 8th, 1923; that defendant has been notified in writing of its infringement of said Letters Patent and demand made upon defendant that defendant cease its infringing acts aforesaid and account to plaintiff for the profits, gains and advantages by defendant realized out of and from

its said infringing acts, and pay plaintiff the damages by plaintiffs suffered therefrom; that notwithstanding such notice defendant has, and intends to continue to infringe said Letters Patent, and has refused to desist therefrom.

6. That without the license or consent of plaintiff, and in infringement and in violation of said Letters Patent, defendant has within the year past manufactured and caused to be manufactured, sold, and offered for sale, used and caused to be used, Brushes and brush constructions embodying and containing the invention patented in and by said Letters Patent, and particularly in and by the respective claims thereof, and as plaintiff is informed and verily believes, and charges the fact to be, intends and purposes to continue so to do; that thereby defendant has realized and is realizing profits, gains and advantages, and plaintiff has suffered great loss, damage and injury, the full amount of which is to plaintiff unknown, and plaintiff prays discovery thereof.

WHEREFORE, plaintiff prays:

1. That an injunction be issued out of and under the seal of this court not only perpetually, but provisionally, during the pendency of this suit, enjoining and commanding the defendant, its attorneys, officers, employees, servants and associates and each and every thereof, to forthwith and immediately cease and refrain from either manufacturing or causing to be manufactured, selling or offering for sale, or otherwise disposing of, using or causing to be used a brush construction embodying or containing said invention patented in and by said Letters Patent, particularly as specified in the several claims

thereof, or any part or parts calculated or intended to be used in infringement thereof.

2. That defendant be adjudged and decreed to account to and pay over unto plaintiff all profits, gains and advantages that defendant has received or derived from infringement of said Letters Patent and that plaintiff have judgment against defendant for all loss, damage and injury suffered by plaintiff.

3. That plaintiff have such other or further or different relief as in equity and good conscience should be granted to it, together with judgment against defendant for plaintiff's costs and disbursements herein.

STEBLER-PARKER COMPANY
BY Fred Stebler
President
Plaintiff

Frederick S. Lyon
Leonard S. Lyon
Henry S. Richmond
Attorneys for Plaintiff.

[Endorsed]: No. J 18 J. United States District Court, Southern District of California, Southern Division. Stebler-Parker Company, Plaintiff vs. Los Angeles Brush Manufacturing Corporation, Defendant. In Equity. Bill of Complaint. Filed Jul 24 1925. Chas. N. Williams, Clerk By R. S. Zimmerman, Deputy Clerk. Lyon & Lyon Frederick S. Lyon, Leanard S. Lyon, 708 National City Bank Building Los Angeles, Cal. Attorneys for Plaintiff.

State of California,)
) SS
County of Riverside.)

FRED STEBLER, being first duly sworn, on oath says:

That he is President of the plaintiff in the foregoing and above entitled action; that he has read the within Bill of Complaint and knows the contents thereof; and that the same is true of his own knowledge except as to the matters and things therein stated on his information or belief, and that as to those matters and things he believes it to be true.

Fred Stebler

SUBSCRIBED AND SWORN TO BEFORE ME this 21st day of July, 1925.

Robert E. Nelson
Notary Public in and for said County and State.

(SEAL)

IN THE UNITED STATES PATENT OFFICE,
SOUTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

STEBLER-PARKER COMPANY, Plaintiff, vs. LOS ANGELES BRUSH MANUFACTURING CORPORATION, Defendant.	)	IN EQUITY NO. J-18-J ANSWER TO BILL OF COMPLAINT

Now comes the defendant herein, Los Angeles Brush Manufacturing Corporation, by its attorney, Ford W. Harris, and answers as follows:

1. Answering paragraph 1. of said Bill of complaint, defendant is without knowledge and therefore denies that the plaintiff is now or has been during all the times hereinafter referred to, a corporation organized and existing under and by virtue of the laws of the State of California, or otherwise, and that it has or has had its principal place or any place of business in the City of Riverside, County of Riverside, State of California, or elsewhere.

2. Answering paragraph 2. of said bill of complaint, defendant admits that the Los Angeles Brush Manufacturing Corporation is now a corporation organized and existing under and by virtue of the laws of the State of California, and that it has its principal place of business in the City of Los Angeles, but denies that the Los Angeles Brush Manufacturing Corporation existed during the entire period covered by the recitals of the bill of complaint herein.

3. Answering paragraph 3. of said bill of complaint, defendant admits that this is a suit arising under the patent laws of the United States.

4. Answering paragraph 4. of said bill of complaint, defendant denies that heretofore, to wit, prior to December 19, 1921, or at any time, Fred Stebler was the original, first or sole inventor of any new and improved brush; denies that the same was novel and patentable under the laws and statutes of the United States; denies that heretofore, to wit, on December 19, 1921, or at any time, said Fred Stebler filed in the United States Patent Office an application in writing in due form of law, or in any form, for the grant and issuance of Letters Pat-

ent of the United States for said invention, and denies that the said Fred Stebler complied with all the requirements of said statutes and laws and of the rules of the United States Patent Office; denies that by an instrument in writing said Fred Stebler did sell, assign, transfer and set over said invention and the exclusive or any right to all Letters Patent therefor to be granted and issued to plaintiff Stebler-Parker Company, its successors and assigns, or otherwise; denies that said alleged instrument in writing was duly recorded in the United States Patent Office prior to May 8, 1923, or at all, and defendant demands that the original alleged instrument in writing or a duly certified copy thereof be produced by the plaintiff in Court; denies that thereafter, to wit, on May 8, 1923, or at any time, Letters Patent of the United States No. 1,454,191 were duly and regularly, or at all, granted by the Government of the United States to plaintiff Stebler-Parker Company, its successors and assigns, for said invention, and defendant demands that the original or a duly certified copy of said alleged Letters Patent be produced in Court by plaintiff; denies that prior to the grant, issuance and delivery of said alleged Letters Patent proper proceedings were had or taken in the matter of said alleged application for Letters Patent as required by the patent laws and statutes of the United States or the rules of the United States Patent Office; and denies that plaintiff Stebler-Parker Company is now, or has been the sole and exclusive owner, or any owner, of said alleged Letters Patent or of any rights and privileges thereby granted and secured.

5. Answering paragraph 5 of said bill of complaint, defendant denies that immediately upon or at any time

after the alleged invention and production of said brush alleged to be invented by said Stebler, the same went into great, general and extended use, or any use, and denies that it superseded all or any brush constructions, and denies that the trade, public and users generally have recognized the novelty and utility thereof, or the validity of said Letters Patent, and denies that plaintiff has manufactured and sold large numbers, or any number, of brushes embodying said invention, and denies that plaintiff has realized large or any gains, profits and advantages therefrom and built up and acquired by reason of the novelty and utility of said alleged invention a large and profitable, or any, trade and demand therefor; denies that defendant, in order to appropriate to itself the trade demand therefor and to divert the same to itself, or for any other purpose, has infringed upon said Letters Patent in any way by manufacturing brushes of any type; denies that each and every device embodying or containing the invention patented in and by said Letters Patent, manufactured, used or sold by the plaintiff, has been conspicuously or at all marked with the word "Patented" together with the day and date of the grant and issuance of said Letters Patent, to wit, May 8, 1923, or that any such devices have been at all marked in accordance with the provisions of the law; and denies that defendant infringes or intends to continue to infringe said Letters Patent and denies that the defendant has refused to desist therefrom.

6. Answering paragraph 6 of said bill of complaint, defendant denies that without the license and consent of the plaintiff, defendant has within the year last past

manufactured or caused to be manufactured, sold and offered for sale, or used or caused to be used brushes and brush constructions embodying and containing the invention patented in and by said Letters Patent and particularly in and by the respective claims thereof; and denies that defendant has realized or is realizing any profits, gains and advantages or that plaintiff has suffered any loss due to any infringing acts of defendant.

And answering further and as separate and distinct defenses defendant alleges:

(A) That said patent sued on is invalid because the alleged invention claimed by said patent is not an invention and was not invented or discovered by the alleged inventor.

(B) That said patent is invalid because the alleged invention disclosed in said patent was not new at the time of the alleged inventor's alleged invention or discovery thereof.

(C) That said patent is invalid because the alleged invention disclosed in said patent is not useful.

(D) That said patent is invalid because the alleged invention disclosed in said patent was well known and used by others in this country before the date of the alleged invention or discovery thereof, the names of the parties using said invention not being at present known to defendant, who requests leaves to insert same herein by amendment when ascertained.

(E) That said patent is invalid because the alleged invention disclosed in said patent was patented in this or in foreign countries before the alleged inventor's alleged invention or discovery thereof, and more particularly in the following patents:

Bowditch	840,106	Jan. 1, 1907
Whittemore	818,497	Apr. 24, 1906
Shaler	21,451	Sept. 7, 1858
Case	1,044,488	Nov. 19, 1912
Clements	549,106	Nov. 5, 1895
Ettig	434,179	Aug. 12, 1890
Larsson	665,832	Jan. 8, 1901
Buchheit	335,052	Jan. 26, 1886
Smith	493,414	Mar. 14, 1893
Quinby	258,117	May 16, 1882
Gladding	264,826	Sept. 19, 1882
Friedey	980,091	Dec. 27, 1910
Quinby	258,117	May 16, 1882
Braun	1,371,601	Mar. 15, 1921
Pittman	220,413	Oct. 7, 1879
McKay	599,515	Feb. 22, 1898
O'Connor	143,838	Oct. 21, 1873
Baker	444,871	Jan. 20, 1891
Baker	444,872	Jan. 20, 1891
Johnston	498,659	May 30, 1893
Fuller	533,707	Feb. 5, 1895
Ford	866,452	Sept. 17, 1907
Rude	1,308,195	July 1, 1919
Remmele	743,195	Nov. 3, 1903
Browne	222,447	Dec. 9, 1879
Adams	1,161,574	Nov. 23, 1915
Collins	657,335	Sept. 4, 1900
Luddy	349,727	Sept. 28, 1886
Bicknell	526,362	Sept. 18, 1894
British	8,971	of 1902
Branth	552,887	Jan. 14, 1896
Campbell	619,134	Feb. 7, 1899

Meyers	501,352	July 11, 1893
Bioren	280,008	Jan. 26, 1883
Light et al	348,469	Aug. 31, 1886
Downs	506,423	Oct. 10, 1893
Smith	581,312	Apr. 27, 1897
Stebler	1,205,119	Nov. 14, 1916

and certain other patents not at present definitely known to defendant but in regard to which defendant is making active search and requests leave to insert herein by amendment when ascertained.

(F) That said patent is invalid because the alleged invention disclosed in said patent was described in certain printed publications in this or in some foreign country before the alleged invention or discovery thereof or more than two years prior to the date of the application of the patent in suit, the particulars in regard to said publications not at present being known to defendant but in regard to which defendant is making active search and which it begs leave to insert herein by amendment when ascertained.

(G) That said patent is invalid because the alleged invention disclosed in said patent was in public use or on sale in this country for more than two years prior to the date of the application resulting in said patent, the full particulars of this use not being at present known to defendant but in regard to which defendant is making active search and which it begs leave to insert herein by amendment when ascertained.

(H) That said patent is invalid because the patentee actually abandoned the invention and thereby lost any right to a patent thereon.

(I) That said patent is invalid because the patentee constructively abandoned the invention by not applying for a patent thereon during the time allowed by the statutes for such an application to be made.

(J) That said patent is invalid because for the purpose of deceiving the public the description and specification filed in the Patent Office in said application for Letters Patent was made to cover less than the whole truth relevant to the invention or was made to cover more than was necessary to produce the desired effect.

(K) That said patent is invalid because the description of the invention in the specification is not in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which it appertains or with which it is most nearly connected to make, construct, compound and use the same.

(L) That said patent is invalid because the claims of the patent are not distinct.

(M) That no recovery can be had from defendant because the plaintiff and its predecessors in interest have made and sold specimens of the invention covered by said patent without marking them "Patented" or without notifying defendant of the now complained of infringement.

(N) That the plaintiff cannot maintain this suit because it has no title to the patent or sufficient title to enable it to maintain this suit.

(O) That plaintiff cannot maintain this suit because defendant is not guilty of any infringement of the patent sued on.

(P) Plaintiff cannot maintain this suit because it does not come into Court with clean hands and is thereby

estopped from enforcing any right of action against defendant.

WHEREFORE, as a measure of the affirmative relief defendant prays that for its protection and the protection of its customers the patent sued on herein be declared invalid.

And defendant further prays that the bill of complaint herein be dismissed and that it may be awarded its costs herein.

Ford W. Harris
Attorney for Defendant.

Los Angeles, California,
September 29, 1925.

Received copy of the within answer this 29th day of September, 1925.

Lyon & Lyon
Frederick S. Lyon
Attorneys for plaintiff.

(Endorsed): No. J - 18 - J. United States District Court, Southern District of California, Southern Division. Stebler-Parker Company, Plaintiff, vs. Los Angeles Brush Manufacturing Corporation, Defendant. In Equity. Answer to Bill of Complaint. Ford W. Harris, 471 Chamber of Com. Bldg., Los Angeles, California. Attorney for defendant. Filed Sep 29 1925. Chas. N. Williams, Clerk by L. J. Cordes, Deputy Clerk.

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISON.

W. B. CLANCY, W. A. JOHNSON, and GEORGE A. SARAU, as Trustees, GEORGE D. PARKER, FRED STEBLER and STEBLER PARKER COMPANY, Plaintiffs, vs. LOS ANGELES BRUSH MANUFACTURING CORPORATION, Defendant.	IN EQUITY NO. J 23 HJ BILL OF COMPLAINT.

Complaining of defendant above named, plaintiffs allege:

1. That plaintiffs, W. B. Clancy, W. A. Johnson and George A. Sarau, are citizens and residents of the City of Riverside, State of California, and sue herein as trustees, owning and holding the legal title to the Letters Patent hereinafter mentioned and the exclusive rights therein and thereto as Trustees for plaintiffs George D. Parker and Fred Stebler and the Stebler-Parker Company; that plaintiffs George D. Parker and Fred Stebler are citizens and residents of Riverside, California; that plaintiff Stebler-Parker Company is now and has been during all the times hereinafter mentioned with reference to the assignment of said Letters Patent to said Trustees, a corporation organized and existing under and by virtue of the laws of the State of California, and has and had its principal place of business in the City of Riverside, County of Riverside, State of California.

2. That defendant Los Angeles Brush Manufacturing Corporation is now, and during all the times hereinafter

referred to with respect to it, was a corporation organized and existing under and by virtue of the laws of the State of California, and has and had its principal place of business in the City of Los Angeles, County of Los Angeles, State of California.

3. That this court has jurisdiction of this suit as this is a suit arising under the patent laws of the United Sattes respecting infringement of Letters Patent granted by the United States.

4. That heretofore, to wit, prior to April 21, 1913, one Charles C. McIntosh was the original, first and sole inventor of a certain new and improved brush construction; that the same was novel and patentable under the laws and statutes of the United States relating to the grant and issuance of Letters Patent for invention; that heretofore, to wit, on April 21, 1913, said Charles C. McIntosh filed in the United States Patent Office an application in writing in due form of law for the grant and issuance of Letters Patent of the United States for said invention and complied with all the requirements of said statutes and laws and of the rules of the United States Patent Office; that by an instrument in writing said Charles C. McIntosh did sell, assign, transfer and set over said invention and the exclusive right to all Letters Patent therefor to be granted and issued to George D. Parker of Riverside, California; that said instrument in writing was executed by said Charles C. McIntosh and in his name and duly recorded in the United States Patent Office prior to the grant and issuance of Letters Patent therefor, as hereinafter alleged; that thereafter, to wit, on April 17th, 1917, Letters Patent of the United

States No. 1,222,645, were duly and regularly granted by the Government of the United States to said George D. Parker, his heirs, legal representatives and assigns for said invention, all as in and by said original Letters Patent, or a duly certified copy thereof ready in court to be produced, as may be required, will more fully and at large appear; that prior to the grant, issuance and delivery of said Letters Patent all proceedings were had and taken in the matter of said application for patent required by the patent laws and statutes of the United States or the rules of the United States Patent Office; that thereafter and prior to July 6th, 1922, by an instrument in writing in his name, and by him executed, the said George D. Parker did sell, assign, transfer and set over to W. B. Clancy, W. A. Johnson, and George A. Sarau, as Trustees for said George D. Parker and plaintiffs Fred Stebler and Stebler-Parker Company, the full and exclusive right, title and interest in and to said Letters Patent for, to and in all that portion of the United States and the territories thereof, West of the Mississippi River, and said W. B. Clancy, W. A. Johnson and George A. Sarau, as Trustees, are now, and ever since said assignment have been, the owners and holders thereof, and of all said exclusive rights, titles and interests, all as more fully and at large will appear by said original instrument in writing so executed by said George D. Parker, or a duly certified copy thereof ready in court to be produced.

5. That immediately upon the invention and production of said brush construction invention by said McIntosh, the same went into great, general and extended

use, and superseded all prior brush constructions, and the trade, public, and users generally have recognized the novelty and utility thereof, and the validity of said Letters Patent, and plaintiff George D. Parker, while owner of said Letters Patent enjoyed a large and substantial profitable business in the manufacture and sale of brushes embodying said invention, and that since the assignment of said Letters Patent and invention of said Trustees, as aforesaid, plaintiff Stebler-Parker Company has continued to manufacture and sell brushes embodying said brush construction and realized large gains and profits therefrom; that defendant, in order to appropriate to itself the trade demand therefor, and to divert the same to itself, has infringed upon said Letters Patent by manufacturing brush constructions infringing said patent, as hereinafter set forth; that each and every device, embodying or containing the invention patented in and by said Letters Patent, manufactured, used or sold by plaintiffs or plaintiff's assignors, or either of them, has been conspicuously marked with the word "Patented" together with the day and date of the grant and issuance of said Letters Patent, to wit: April 17, 1917; that defendant has been notified in writing of its infringement of said Letters Patent and demand made upon defendant that defendant cease its infringing acts aforesaid and account to plaintiffs for the profits, gains and advantages by it realized out of and from its said infringing acts and pay plaintiffs the damage by them suffered therefrom; that notwithstanding such notice defendant has and intends to continue to infringe said Letters Patent and has refused to desist therefrom.

6. That without the license or consent of said Charles C. McIntosh or said George D. Parker, or of said W. B. Clancy, W. A. Johnson and George A. Sarau, as Trustees or said Fred Stebler or said Stebler-Parker Company, or of either of them, and in infringement and in violation of said Letters Patent, defendant has within the year last past manufactured and caused to be manufactured, sold and offered for sale, and used and caused to be used, brush constructions embodying and containing the invention patented in and by said Letters Patent, and particularly in and by Claim 5 thereof, and as plaintiffs are informed and verily believe and charge the fact to be, intend and purpose to continue so to do; that thereby defendant has realized, and is realizing, profits, gains and advantages and plaintiffs have suffered great loss, damage and injury, the full amount of which is to plaintiffs unknown, and plaintiffs pray discovery thereof.

WHEREFORE, plaintiffs pray:

(1) That an injunction be issued out of and under the seal of this court not only perpetually but provisionally during the pendency of this suit, enjoining and commanding defendant, its attorneys, officers, employes, servants, and associates, and each and every thereof, to forthwith and immediately cease and refrain from either manufacturing or causing to be manufactured, selling, offering for sale or otherwise disposing of, using or causing to be used, any brush construction embodying or containing said brush construction and invention patented in and by said Letters Patent, and particularly as specified in claim 5 thereof, or any part or parts calculated or intended to be used in infringement thereof.

(2) That defendant be adjudged and decreed to account to and pay over unto plaintiffs all profits, gains and advantages that defendant has received or derived from infringement of said Letters Patent and that plaintiffs have judgment against defendant for all loss, damage and injury suffered by plaintiffs.

(3) That plaintiffs have such other or further or different relief as in equity and good conscience should be granted to them, together with judgment against defendant for plaintiffs' costs and disbursements herein.

W. B. Clancy
W. A. Johnson
George A. Swan
As Trustees
George D. Parker
Fred Stebler
Stebler Parker Company
By Fred Stebler
President
Plaintiffs

Frederick S. Lyon
Leonard S. Lyon
Henry S. Richmond
Attorneys for Plaintiffs.

State of California,)
) SS
County of Riverside.)

FRED STEBLER, being first duly sworn, on oath says:

That he is one of the plaintiffs in the foregoing and above entitled action, that he has read the within Bill of Complaint and knows the contents thereof; and that the same is true of his own knowledge except as to the matters and things therein stated on his information or

belief, and that as to those matters and things he believes it to be true.

Fred Stebler

Subscribed and sworn to before me this 21st day of July, 1925.

Robert E. Nelson

Notary Public in and for said County and State.

(SEAL)

(Endorsed): No. J 23 H. United States District Court, Southern District of California, Southern Division. W. B. Clancy, W. A. Johnson, and George A. Sarau, as Trustees, et al., Plaintiffs vs. Los Angeles Brush Manufacturing Corporation, Defendant. In Equity. Bill of Complaint. Filed Jul 24, 1925. Chas. N. Williams, Clerk By R. S. Zimmerman, Deputy Clerk. Lyon & Lyon. Frederick S. Lyon Leonard S. Lyon, 708 National City Bank Building, Los Angeles, Cal. Attorneys for Plaintiffs.

IN THE UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA,
SOUTHERN DIVISION.

W. B. Clancy, W. A. JOHNSON, and GEORGE A. SARAU, as Trustees, GEORGE D. PARKER, FRED STEBLER, and STEBLER-PARKER COMPANY, Plaintiffs,	)	IN EQUITY NO. J-23-H. ANSWER TO BILL OF COMPLAINT.
vs.	)	
LOS ANGELES BRUSH MANUFACTURING CORPORATION, Defendant.	)	

Now comes the defendant herein, Los Angeles Brush Manufacturing Corporation, by its attorney, Ford W. Harris, and answers as follows:

1. Answering paragraph 1 of said bill of complaint, defendant is without knowledge and therefore denies that the plaintiffs, W. B. Clancy, W. A. Johnson and George A. Sarau, are citizens and residents of the City of Riverside, state of California, or that they sue herein as trustees or have capacity so to sue, or that they own or hold the legal or any title to the Letters Patent hereinafter mentioned, or the exclusive or any rights therein or thereto as trustees or otherwise for the plaintiffs George D. Parker and Fred Stebler and the Stebler-Parker Company, or for others; denies that the plaintiffs George D. Parker and Fred Stebler are citizens and residents of Riverside, California; denies that the plaintiff Stebler-Parker Company is now or has been during all the times hereinafter mentioned with reference to the assignment of said Letters Patent to said trustees, a corporation organized and existing under and by virtue of the laws of the State of California or otherwise, and that it has or has had its principal or any place of business in the City of Riverside, County of Riverside, State of California, or elsewhere.

2. Answering paragraph 2 of said bill of complaint, defendant admits that the Los Angeles Brush Manufacturing Corporation is now a corporation organized and existing under and by virtue of the laws of the State of California, and that it has its principal place of business in the City of Los Angeles, but denies that the Los Angeles Brush Manufacturing Corporation existed during the entire period covered by the recitals of the bill of complaint herein.

3. Answering paragraph 3 of said bill of complaint, defendant admits that this is a suit arising under the patent laws of the United States.

4. Answering paragraph 4 of said bill of complaint, defendant denies that heretofore, to wit, prior to April 21, 1913, or at any time, Charles C. McIntosh was the original, first or sole inventor of any new and improved brush construction; denies that the same was novel and patentable under the laws and statutes of the United States; denies that heretofore, to wit, on April 21, 1913, or at any time, said Charles C. McIntosh filed in the United States Patent Office an application in writing in due form of law, or any form, for the grant and issuance of Letters Patent of the United States for said invention, and denies that the said Charles C. McIntosh complied with all the requirements of said statutes and laws and of the rules of the United States Patent Office; denies that by an instrument in writing said Charles C. McIntosh did sell, assign, transfer and set over said invention and the exclusive or any right to all Letters patent therefor to be granted and issued to George D Parker of Riverside, California, or otherwise; denies that said instrument in writing was executed by said Charles C. McIntosh or in his name, and denies that it was duly recorded in the United States Patent Office prior to the grant and issuance of Letters Patent therefor; denies that thereafter, to wit, on April 17, 1917, or at any time, Letters Patent of the United States No. 1,222,645 were duly and regularly, or at all, granted by the Government of the United States to said George D. Parker, his heirs, legal representatives and assigns

for said invention, and defendant demands that the original or a duly certified copy of said alleged Letters Patent be produced in Court by the plaintiffs; denies that prior to the grant, issuance and delivery of said alleged Letters Patent proper proceedings were had or taken in the matter of said alleged application for Letters Patent as required by the patent laws and statutes of the United States or the rules of the United States Patent Office; denies that thereafter and prior to July 6, 1922, or at any time, by an instrument in writing in his name and by him executed, the said George D. Parker did sell, assign, transfer and set over to W. B. Clancy, W. A. Johnson and George A. Sarau, as trustees for said George D. Parker and plaintiffs Fred Stebler and Stebler-Parker Company, the full and exclusive right, title and interest in and to said Letters Patent for, to and in any portion of the United States, and denies that the said W. B. Clancy, W. A. Johnson and George A. Sarau, as trustees or otherwise, are now or have been the owners and holders thereof or of any rights thereunder, and defendant demands that the original alleged instrument in writing or a duly certified copy thereof be produced by the plaintiffs in Court.

5. Answering paragraph 5 of said bill of complaint, defendant denies that immediately upon or at any time after the alleged invention and production of said brush construction alleged to be invented by said McIntosh, the same went into great, general and extended use, or any use, and denies that it superseded all or any prior brush constructions, and denies that the trade, public and users generally have recognized the novelty and utility thereof,

or the validity of said Letters Patent, and denies that the plaintiff George D. Parker while owner of said Letters Patent enjoyed a large and substantial, or any, profitable business in the manufacture and sale of brushes embodying said invention, and denies that since the assignment of said Letters Patent and invention to said trustees, plaintiff Stebler-Parker Company has continued to manufacture and sell brushes embodying said brush construction and realize large or any gains or profits therefrom; denies that defendant, in order to appropriate to itself the trade demand therefor and to divert the same to itself, or for any other purpose, has infringed upon said Letters Patent in any way by manufacturing brush constructions of any type; denies that each and every device embodying or containing the invention patented in and by said Letters Patent, manufactured, used or sold by the plaintiffs or plaintiffs' assignors, or either of them, have been conspicuously or at all marked with the word "Patented" together with the day and date of the grant and issuance of said Letters Patent, or that any such devices have been at all marked in accordance with the provisions of the law; and denies that the defendant infringes or intends to continue to infringe said Letters Patent and denies that the defendant has refused to desist therefrom.

6. Answering paragraph 6 of said bill of complaint, defendant denies that without the license or consent, or otherwise, of the said Charles C. McIntosh or George D. Parker, or of said W. B. Clancy, W. A. Johnson and George A. Sarau, as trustees, or said Fred Stebler or Stebler-Parker Company, or of either of them, the de-

fendant has within the year last past manufactured or caused to be manufactured, sold and offered for sale, or used or caused to be used brush construction embodying and containing the invention patented in and by said Letters Patent, and particularly denies that it has infringed claim 5 thereof; and denies that defendant has realized or is realizing any profits, gains and advantages or that plaintiffs have suffered any loss due to any infringing acts of defendant.

And answering further and as separate and distinct defenses defendant alleges

(A) That said patent sued on is invalid because the alleged invention claimed by said patent is not an invention and was not invented or discovered by the alleged inventor.

(B) That said patent is invalid because the alleged invention disclosed in said patent was not new at the time of the alleged inventor's alleged invention or discovery thereof.

(C) That said patent is invalid because the alleged invention disclosed in said patent is not useful.

(D) That said patent is invalid because the alleged invention disclosed in said patent was well known and used by others in this country before the date of the alleged invention or discovery thereof, the names of the parties using said invention not being at present known to defendant, who requests leave to insert same herein by amendment when ascertained.

(E) That said patent is invalid because the alleged invention disclosed in said patent was patented in this or in foreign countries before the alleged inventor's al-

leged invention or discovery thereof, and more particularly in the following patents:

Howard	1,025,062	Apr. 30, 1912
Taplin	937,970	Oct. 26, 1909
Hendrix	626,613	June 6 1899
Taplin	812,466	Feb. 13, 1906
Harvey	790,834	May 23, 1905
Perry	745,658	Dec. 1, 1903
Porter	1,058,460	Apr. 8, 1913
Strain	846,161	Mar. 5, 1907
Strain	846,162	Mar. 5, 1907
McKay	599,515	Feb. 22, 1898
Pittman	220,413	Oct. 7, 1879
Nicholson	290,914	Dec. 25, 1883
Roth	477,703	June 28, 1892
Phelps	409,754	Aug. 27, 1889
Haley	703,916	July 1, 1902
Smith	581,312	Apr. 27, 1897
British	8,971	of 1902

and certain other patents not at present definitely known to defendant but in regard to which defendant is making active search and requests leave to insert herein by amendment when ascertained.

(F) That said patent is invalid because the alleged invention disclosed in said patent was described in certain printed publications in this or in some foreign country before the alleged invention or discovery thereof or more than two years prior to the date of the application of the patent in suit, the particulars in regard to said publications not at present being known but in regard to which defendant is making active search and

which it begs leave to insert herein by amendment when ascertained.

(G) That said patent is invalid because the alleged invention disclosed in said patent was in public use or on sale in this country for more than two years prior to the date of the application resulting in said patent, the full particulars of this use not being at present known to defendant but in regard to which defendant is making active search and which it begs leave to insert herein by amendment when ascertained.

(H) That said patent is invalid because the patentee actually abandoned the invention and thereby lost any right to any patent thereon.

(I) That said patent is invalid because the patentee constructively abandoned the invention by not applying for a patent thereon during the time allowed by the statutes for such application to be made.

(J) That said patent is invalid because for the purpose of deceiving the public the description and specification filed in the Patent Office in said application for Letters Patent was made to cover less than the whole truth relevant to the invention or was made to cover more than was necessary to produce the desired effect.

(K) That said patent is invalid because the description of the invention in the specification is not in such full, clear, concise and exact terms as to enable any person skilled in the art or science to which it appertains or with which it is most nearly connected to make, construct, compound and use the same.

(L) That said patent is invalid because the claims of the patent are not distinct.

(M) That no recovery can be had from defendant because the plaintiffs and their predecessors in interest have made and sold speciments of the invention covered by said patent without marking them "Patented" or without notifying defendant of the now complained of infringement.

(N) That the plaintiffs cannot maintain this suit because they have no title to the patent or sufficient title to enable them to maintain this action.

(O) That the plaintiffs cannot maintain this suit because defendant is not guilty of any infringement of the patent sued on.

(P) That the plaintiffs cannot maintain this suit because they do not come into Court with clean hands and are thereby estopped from enforcing any right of action against defendant.

WHEREFORE, as a measure of the affirmative relief defendant prays that for its protection and the protection of its customers the patent sued on herein, and particularly claim 5 thereof be declared invalid.

And defendant further prays that the bill of complaint herein be dismissed and that it may be awarded its costs herein.

Ford W. Harris
Attorney for Defendant.

Los Angeles, California, September 29, 1925.

Received copy of the Within Answer this 29th day of September, 1925.

Lyon & Lyon
Frederick S. Lyon
Attorneys for Plaintiffs.

[Endorsed]: No. J-23-H. United States District Court, Southern District of California, Southern Division. W. B. Clancy, W. A. Johnson and George A. Sarau, as Trustee, George D. Parker, Fred Stebler and Stebler Parker Company, Plaintiffs, vs. Los Angeles Brush Manufacturing Corporation, Defendant. In Equity. Answer to Bill of Complaint. Ford W. Harris, 471 Chamber of Commerce, Los Angeles, California, Attorney for Defendant. Filed Sep 29 1925. Chas. N. Williams, Clerk By L. J. Cordes, Deputy Clerk.

At a stated term, to wit: The JULY Term, A. D. 1926 of the District Court of the United States of America, within and for the Southern Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Friday the 10th day of September in the year of our Lord one thousand nine hundred and twenty-six

Present:

The Honorable EDWARD J. HENNING, District Judge.

Stebler-Parker Company, Plaintiff	)	
	)	
vs.	)	No. J-18-J. Eq.
	)	
L. A. Brush Manufacturing Company, Defendant	)	
W. B. Clancy, et al., Plaintiffs	)	
	)	
vs.	)	No. J-23-H-J.
	)	
L. A. Brush Manufacturing Company, Defendant	)	

These causes coming before the Court for setting for trial; H. S. Richmond, Esq., appearing for the plaintiffs, and Ford W. Harris, Esq., appearing as counsel for the defendants; said H. S. Richmond, Esq., moves to refer to a Special Master, and Ford W. Harris, Esq., having objected to these causes being referred to a Master, it is by the Court ordered that these causes stand submitted for setting or for reference to Special Master.

District Court of the United States
SOUTHERN DISTRICT OF CALIFORNIA
SOUTHERN DIVISION

UNITED STATES OF AMERICA }
SOUTHERN DISTRICT OF CALIFORNIA } ss:

I, CHAS. N. WILLIAMS, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing is a full, true and correct copy of an original Bill of Complaint filed July 24, 1925, and Answer filed September 29th., 1925, in each of the cases entitled: Stebler-Parker Co., Plaintiff, vs. L. A. Brush Manufacturing Co., Defendant, No. J 18 J Equity, and W. B. Clancy, et al., Plaintiffs, versus the same defendant, No. J 23 J Equity; order made and entered September 10th, 1926 in both cases; the proceedings had in both cases on September 12th, 1926; and in each of the said cases an Order Referring cause to Special Master, each of which was filed September 14th, 1926: all in the Southern Division, - - - - - - - - - - - - - as the same appears from the original record remaining in my office.

WITNESS my hand and the seal of said Court, this 22nd day of September, A. D. 1926.

(Seal) CHAS. N. WILLIAMS,
Clerk.
By R S Zimmerman
Deputy Clerk.

[Endorsed]: United States District Court Southern District of California Southern Division. Stebler-Parker Co. Plaintiffs, W. B. Clancy, et al., Plaintiffs, Vs. Los Angeles Brush Manufacturing Corporation, Defendant. Certified Copies of Various Papers.

SUPREME COURT OF THE UNITED STATES.

No. —.—October Term, 1926.

Los Angeles Brush Manufacturing Corporation, *vs.* William P. James, Judge, District Court of the United States, Southern District of California.	Motion for leave to file a petition for mandamus.

[January 3, 1927.]

Mr. Chief Justice Taft delivered the opinion of the Court.

This is a motion for leave to file a petition for mandamus by the Los Angeles Brush Manufacturing Corporation, against a Judge of the United States District Court for the Southern District of California. The petitioner is a defendant in two patent suits pending in that court, in one of which the Stabler Parker Company is complainant, and W. B. Clancy and others are complainants in the other. The suits are bills in equity brought to restrain the defendant from infringement of a patent for a new and improved brush. The defendant answered and the complainants moved to set the two cases for trial. Counsel for the complainants said that while his clients would prefer to try the case before the court, he would ask, if the court had not time to try them, that the cases be referred to a special master. Counsel for the defendant objected to such a reference, and said that if the reference was to be made, he would like to have a notation in the record that no showing had been made of exceptional circumstances, and that the cases were referred to the master over his objection. Thereupon the following order was made in each case:

"This cause now appearing on the call of the Court's calendar to be set for trial, and it being the desire of both counsel for the plaintiff and defendant, as expressed in open Court, that a date be fixed for the trial hereof, and counsel for the plaintiff insists that, because of alleged acts of infringement committed by the defendant, plaintiff will suffer damage by reason of the great delay in

the hearing and determination of the issues herein; and it appearing that because of the congestion of the Court's calendar there are many other causes entitled to be first heard, including a large number of criminal causes which are entitled to preference over civil matters as to the trial thereof; and it further appearing that, because of the protracted length of patent trials, the result has been and is that other civil litigants having causes to be tried have not been accorded a fair proportion of the time of the Court; and it appearing that this condition will continue unless many of the patent cases, including this cause, now pending can be disposed of in the manner herein provided, and, hence, that in order to fairly and within a reasonable time dispose of the business before the Court, it is necessary that this order be made:

"It is now ordered, that this cause be referred to Charles C. Montgomery, Esq., Standing Master in Chancery, to take and hear the evidence offered by the respective parties and to make his conclusions as to the facts in issue and recommend the judgment to be entered thereon; the Standing Master in Chancery is authorized and empowered to do all things and to make such orders as may be required to accomplish a full hearing on all matters of fact and law in issue in this cause; the objection of counsel for the defendant to the making of this order referring the cause to the Master is hereby noted and an exception is allowed in favor of the defendant."

Thereupon the defendant filed this petition asking a rule against the Judge to show cause why a mandamus may not issue directing him to vacate the order of reference to the master and to place the causes on the calendar for trial in open court. He says that he is informed and believes that at some time prior to July 12, 1926, the judges of the United States District Court, Southern District of California, by mutual agreement, appointed Montgomery as standing master to try patent causes; that at the calling of the term calendar in July, 1926, and at divers times since, all the district judges have announced in open court and in chambers that they would not personally try all causes involving patents for invention but would refer substantially all such causes to said standing master; that the result is that the standing master has set up a court with an extensive docket, that the causes here in question are ordinary and extremely simple patent causes which can be quickly and expeditiously tried, as will appear from the records therein; that the principal reasons given for the action by the court is that patent causes sometimes require protracted trials and that the court calendar is now, and has been for some years,

rather congested, but that this condition is not exceptional but quite usual in most of the district courts and promises to continue indefinitely. The petitioner avers that it has an established right under the Equity Rules to a trial in open court; that the petitioner has no other remedy than application to this Court to act under the supervisory authority established by section 234 of the Judicial Code, 1 Stat. at Large 80, and in accordance with *Virginia* v. *Rives,* 100 U. S. 313; that unless this application is granted, the litigants in patent causes in the Southern District of California will be forced at their own expense to maintain a patent court set up by the judges of the District Court and operating in defiance of the plain intent of the Equity Rules; that by thus singling out patent cases such judges have unjustly and arbitrarily discriminated against a certain class of litigants and subjected those litigants to unnecessary trouble and expense, because proceedings before a master are invariably protracted and expensive, and the cost of such proceedings must be borne by the litigants.

By section 917 of the Revised Statutes, this Court is given power from time to time in any manner not inconsistent with the laws of the United States, to regulate the whole practice to be used in suits in equity or admiralty by the district courts—*Weyman* v. *Southard,* 10 Wheat. 443. This was taken from section 13 of the original Judiciary Act, 1 Stat. 80, c. 20. The same 13th section provided that the Supreme Court should have appellate jurisdiction to issue writs of mandamus in cases warranted by the principles and usages of law to any courts appointed under the authority of the United States. This part of the original section 13 became embodied in section 688 of the Revised Statutes and is now to be found in section 234 of the Judicial Code.

In *Virginia* v. *Rives,* 100 U. S. 313, at p. 323, Mr. Justice Strong, speaking for the court in reference to writs of mandamus which the Supreme Court might issue, said:

"In what case such a writ is warranted by the principles and usages of law it is not always easy to determine. Its use has been very much extended in modern times, and now it may be said to be an established remedy to oblige inferior courts and magistrates to do that justice which they are in duty, and by virtue of their office, bound to do. It does not lie to control judicial discretion, except when that discretion has been abused; but it is a remedy when the case is outside of the exercise of this discretion, and out-

side the jurisdiction of the court or officer to which or to whom the writ is addressed."

The hearing of these causes in review would normally be had in the Circuit Court of Appeals of the Ninth Circuit and they could only come here in due course by applications for certiorari and the granting of them. We do not need to decide whether the intervention between this Court and the District Court of an intermediate appellate court would prevent the issue of mandamus by this Court direct to the District Court in matters in which the Circuit Court of Appeals would or should ordinarily have power to issue a mandamus to the same end in aid of its appellate jurisdiction. However that may be, we think it clear that where the subject concerns the enforcement of the Equity Rules which by law it is the duty of this Court to formulate and put in force, and in a case in which this Court has the ultimate discretion to review the case on its merits, it may use its power of mandamus and deal directly with the District Court in requiring it to conform to them. *Ex parte Abdu,* 247 U. S. 27, 28; *Ex parte Crane,* 5 Peters 190, 192, 193, 194. This is not to say that in every case where the Equity Rules are the subject of interpretation and enforcement in the District Court, such questions may as of course be brought here and considered in a direct proceeding in mandamus. The question of thus using the writ of mandamus would be a matter of discretion in this Court, and it would decline to exercise its power where the issue might more properly come up by mandamus in an intermediate appellate court or in regular proceedings on review. If it clearly appeared, however, that a practice had been adopted by district judges as to the order or procedure in hearing causes at variance with the equity rules, our writ might well issue directly to such judges.

Rule 46 requires that in any trials in equity the testimony of witnesses shall be taken orally in open court, except as otherwise provided by statute or the rules, and that the Court shall pass upon the admissibility of all evidence offered as in actions at law. Equity Rule 59 provides that save in matters of account, a reference to a master shall be the exception, not the rule, and shall be made only upon a showing that some exceptional condition requires it. These rules were adopted by this Court after a thorough revision. Committees of the Bar from the nine different

circuits were invited to assist the Court in the matter. The Court, after much consideration, concluded that the then method of taking evidence in patent, and other causes in equity had been productive of unnecessary expense and burden to the litigants and caused much delay in their disposition, and that the effective way to avoid the making of extended records, unnecessary to a consideration of the real issues of the causes, was to require, so far as it might be possible and practicable, that the evidence taken in patent and other cases should be taken in open court, and that in only exceptional cases should the cause be referred after issue to a special master. Though there has been some criticism and complaint of the inconveniences that arise from this change of the rules, the Court is strongly convinced that the change has justified itself and has no purpose to amend the provisions of Rule 46 and Rule 59. Were it to find that the rules have been practically nullified by a district judge or by a concert of action on the part of several district judges, it would not hesitate to restrain them. One of the causes for complaint of the general administration of justice is the expense it entails upon the litigants, and so far as it reasonably may do so, this Court is anxious to minimize the basis for such complaints. There is no reason why a patent litigant should be subjected to any greater expense than any other litigant except as it may be involved in the inherent and inevitable difference between the presentation of the issues as to the merit and validity of a patent grant and that which obtains in the litigation of an ordinary bill for relief in equity or of an action at law upon a debt or for a tort.

Of course courts must exercise a discretion in reference to the order of business to be conducted before them, and all the cases can not be heard at once. It is in the interest of economy of time that there should be hearings, first in one class of cases, and then in another, provided each class may be given an opportunity within a reasonable time. Arguments based on humanity and necessity for the preservation of public order require that criminal cases should be given a reasonable preference, but even this must be conceded with moderation, and what time there is of the Court in view of the whole docket must be equitably distributed. The reason given in the order for referring these cases to a special master is that there is congestion in the court's calendar and that there are many other cases entitled to be heard first, including a large number of

criminal causes which should be preferred over civil causes as to the trial thereof, that other civil litigation has not been accorded a fair proportion of the time of the Court, and that the condition will continue unless many of the patent cases, including this cause, be disposed of by such a reference.

In view of the recitals of the order, we are not inclined to infer that there has been any deliberate abuse of discretion in this matter or to hold that there may not sometimes be such a congestion in the docket as to criminal cases as would justify a district judge in not literally complying with the requirements of the two rules in question. There has been an emergency due to a lack of judges in some districts which we can not ignore. We shall therefore deny leave to file this petition, but are content to state our views on the general subject, with confidence that the district judges will be advised how important we think these two rules are, and that we intend, so far as lies in our power, to make them reasonably effective for the purpose had in view in their adoption.

Leave denied.

A true copy.

Test:

Clerk, Supreme Court, U. S.